

TEXAS COURT OF APPEALS, FOURTH DISTRICT, SAN ANTONIO

**Erica Barrera, Individually and as Next Friend of D.R., Minor;
Michael Brown, Individually and as Next Friend of V.B., Minor;
Jennifer Davis, Individually and as Next Friend of Z.D., Minor;
Angeli Rose Gomez, Individually and as Next Friend of G.B. & A.G.,
Minors; Luz Hernandez, Individually and as Next Friend of N.J.,
Minor; Carla Rose King; Tiffany Luna, Individually and as Next
Friend of A.P., Minor; Tamica Martinez, Individually and as Next
Friend of R.D., Minor; Tiffany Massey; Yolanda Morales,
Individually and as Next Friend of Z.G., Minor; Nicole Faye Ogburn;
Mary Ann Reyes, Individually and as Next Friend of A.S. & A.S.,
Minors; Bianca Rivera, Individually and as Next Friend of G.R.,
Minor; Christina and Brenda Sonora, Individually and as Next
Friend of V.S., Minor; David Trevino, Individually and as Next
Friend of A.T., I.T., & D.T., Minors; Krystal Upton, Individually and
as Next Friend of J.T. and B.T., Minors; Esmeralda Velasquez,
Individually and as Next Friend of C.V., Minor; Sofia Zapata,
Individually and as Next Friend of M.S., Minor v. Uvalde County and
The Texas Department of Public Safety**

No. 04-24-00461-CV · No. 04-24-00461-CV · Decided February 25, 2026

SUMMARY

The Fourth Court of Appeals affirmed dismissal of negligence claims brought by teachers, students, and parents who survived the Robb Elementary School shooting against Uvalde County and the Texas Department of Public Safety. The court held that the Texas Tort Claims Act did not waive governmental immunity because the alleged nonuse or condition of tangible property, including law-enforcement radios and equipment, did not establish proximate causation. The court also concluded that the jurisdictional defects could not be cured by amendment.

CASE DETAILS

COURT	Texas Court of Appeals, Fourth District, San Antonio
WRITING FOR THE COURT	Lori I. Valenzuela, Justice; Lori Massey Brissette, Justice; H. Todd McCray, Justice
JURISDICTION	Fourth Court of Appeals, San Antonio, Texas
DECIDED	February 25, 2026
DOCKET	04-24-00461-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment granting pleas to the jurisdiction and dismissing negligence claims against Uvalde County and the Texas Department of Public Safety for lack of subject-matter jurisdiction.
STANDARD OF REVIEW	The court reviews a ruling on a plea to the jurisdiction de novo. Pleadings are construed liberally in the plaintiffs' favor and the court looks to the pleaders' intent; if jurisdictional defects are incurable, dismissal without an opportunity to amend is proper.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential value is not otherwise specified in the source.
PARTIES	Erica Barrera, Individually and as Next Friend of D.R., Minor, Michael Brown, Individually and as Next Friend of V.B., Minor, Jennifer Davis, Individually and as Next Friend of Z.D., Minor, Angeli Rose Gomez, Individually and as Next Friend of G.B. & A.G., Minors, Luz Hernandez, Individually and as Next Friend of N.J., Minor, Carla Rose King, Tiffany Luna, Individually and as Next Friend of A.P., Minor, Tamica Martinez, Individually and as Next Friend of R.D., Minor, Tiffany Massey, Yolanda Morales, Individually and as Next Friend of Z.G., Minor, Nicole Faye Ogburn, Mary Ann Reyes, Individually and as Next Friend of A.S. & A.S., Minors, Bianca Rivera, Individually and as Next Friend of G.R., Minor, Christina and Brenda Sonora, Individually and as Next Friend of V.S., Minor, David Trevino, Individually and as Next Friend of A.T., I.T., & D.T., Minors, Krystal Upton, Individually and as Next Friend of J.T. and B.T., Minors, Esmeralda Velasquez, Individually and as Next Friend of C.V., Minor, Sofia Zapata, Individually and as Next Friend of M.S., Minor v. Uvalde County, The Texas Department of Public Safety

TOPICS

subject matter jurisdiction

civil procedure

statutory interpretation

appellate procedure

negligence

PRACTICE AREAS

governmental immunity

Texas Tort Claims Act

civil procedure

appellate procedure

negligence

QUESTIONS PRESENTED

1. Whether the appellants pleaded facts establishing a waiver of governmental immunity under the Texas Tort Claims Act's tangible-property provision.
2. Whether negligent implementation of an active-shooter policy independently waives governmental immunity.
3. Whether alleged non-use of doors, locks, keys, protective equipment, firearms, and communications equipment establishes a waiver of immunity.
4. Whether alleged defects in law-enforcement radios were sufficiently causally connected to the appellants' injuries to support a waiver of immunity.
5. Whether the appellants were entitled to amend their pleadings before dismissal.

HOLDINGS

1. The appellants did not plead facts showing that their injuries were proximately caused by the use or condition of tangible personal or real property, and therefore did not establish a waiver of governmental immunity under Texas Civil Practice and Remedies Code section 101.021(2).
2. Negligent implementation of an active-shooter policy does not itself waive governmental immunity; a plaintiff must first establish a waiver under another provision of the TTCA.
3. Allegations that governmental entities failed to use or possess doors, locks, keys, protective equipment, firearms, or communications equipment do not establish a waiver because mere non-use of property is insufficient.
4. The alleged condition of the law-enforcement radios did not establish a TTCA waiver because the petition did not allege facts showing that the radios actually caused the rescue delay or that the injuries would not have occurred but for the radio defects.
5. The trial court properly dismissed the lawsuit without allowing the appellants another opportunity to amend because the jurisdictional defects were incurable on the record.

KEY QUOTATIONS

“But as judges, we are bound by the maxim that “the waiver of governmental immunity is a matter addressed to the Legislature, not the courts.”” (12)

“Under the current version of the Texas Tort Claims Act, the trial court had no choice but to conclude that Uvalde County and the Texas Department of Public Safety cannot be sued in this case.” (14)

FACTUAL BACKGROUND

The appellants were teachers and students, or parents of students, who were on the Robb Elementary School campus during the May 24, 2022 mass shooting. They alleged that Uvalde County and DPS failed to implement

active-shooter protocols, maintain security equipment and communication systems, and properly train or supervise law-enforcement personnel, causing a delayed rescue and resulting physical and psychological injuries. Their claims relied primarily on doors, locks, keys, protective equipment, firearms, and allegedly defective law-enforcement radios as tangible property under the Texas Tort Claims Act.

PROCEDURAL HISTORY

The appellants sued Uvalde County, DPS, the Texas Rangers, Uvalde Consolidated Independent School District, and the City of Uvalde under the Texas Tort Claims Act. The trial court granted the governmental defendants' pleas to the jurisdiction. The appellants withdrew their request for rehearing as to UCISD and the Texas Rangers; the City did not appear and was not a party to the appeal. The court treated a subsequent clarifying order as the final judgment and affirmed the dismissal as to Uvalde County and DPS.

DISPOSITION

affirmed

CASES CITED

- Tex. Dep't of Parks & Wildlife v. Miranda, 133 S.W.3d 217, 224-27 (Tex. 2004)
- Tarrant County v. Bonner, 574 S.W.3d 893, 899 (Tex. 2019)
- Univ. of Tex. M.D. Anderson Cancer Ctr. v. McKenzie, 578 S.W.3d 506, 512-13 (Tex. 2019)
- San Antonio State Hosp. v. Cowan, 128 S.W.3d 244, 246 (Tex. 2004)
- Kerrville State Hosp. v. Clark, 923 S.W.2d 582, 584-85 (Tex. 1996)
- Univ. of Tex. Med. Branch at Galveston v. Kai Hui Qi, 402 S.W.3d 374, 381-87 (Tex. App.—Houston [14th Dist.] 2013, no pet.)
- City of San Antonio v. Maspero, 640 S.W.3d 523, 532-33 (Tex. 2022)
- Perez v. City of Dallas, 180 S.W.3d 906, 911 (Tex. App.—Dallas 2005, no pet.)
- Kirstein v. City of S. Padre Island, No. 13-18-00574-CV, 2019 WL 4200298, at *3 (Tex. App.—Corpus Christi—Edinburg Sept. 5, 2019, pet. denied) (mem. op.)
- City of N. Richland Hills v. Friend, 370 S.W.3d 369, 372-73 (Tex. 2012)
- White v. City of Houston, 624 S.W.3d 28, 32-33 (Tex. App.—Houston [1st Dist.] 2021, no pet.)
- Lowe v. Texas Tech University, 540 S.W.2d 297, 298-300 (Tex. 1976)
- Robinson v. Central Texas MHMR Center, 780 S.W.2d 169, 169, 171 (Tex. 1989)
- City of Dallas v. Sanchez, 494 S.W.3d 722, 724-27 (Tex. 2016) (per curiam)
- Ryder Integrated Logistics, Inc. v. Fayette County, 453 S.W.3d 922, 929 (Tex. 2015)
- Smith v. Tarrant County, 946 S.W.2d 496, 498-501 (Tex. App.—Fort Worth 1997, writ denied)
- Salazar v. Lopez, 88 S.W.3d 351, 353 (Tex. App.—San Antonio 2002, no pet.)
- Dall. Area Rapid Transit v. Whitley, 104 S.W.3d 540, 543-44 (Tex. 2003)
- Tex. A&M Univ. Sys. v. Koseoglu, 233 S.W.3d 835, 837 (Tex. 2007)

- Tex. Dep't of Crim. Just.—Cmty. Just. Assistance Div. v. Campos, 384 S.W.3d 810, 815 (Tex. 2012) (per curiam)
- Sides v. Guevara, 247 S.W.3d 293, 299 n.4 (Tex. App.—El Paso 2007, no pet.)
- Saeco Elec. & Util., Ltd. v. Gonzales, 392 S.W.3d 803, 806 (Tex. App.—San Antonio 2012, pet. granted, judgm't vacated w.r.m.)

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/fourth-court-of-appeals-san-antonio-texas-texas-court-of-appeals-fourth-district-san-antonio/2026/erica-barrera-individually-and-as-next-friend-of-d-r-minor-ivhinp0g>